STATEWIDE PROGRAM STANDING COMMITTEE
FOR ADULT MENTAL HEALTH

October 1, 2007
Notes

MEMBERS PRESENT: Lise Ewald, Kitty Gallagher, George Karabakakis, Clare Munat, Marty Roberts, and Jim Walsh

DMH STAFF: Michael Hartman, Melinda Murtaugh, and Frank Reed

OTHERS: Kenneth Adler, M.D., and Peter Thomashow, M.D.

Marty Roberts facilitated today's meeting. She recognized Michael Hartman before proceeding to any other business.

Follow-up Remarks on Commitments and Involuntary Psychiatric Medications in Vermont and Pennsylvania: Michael Hartman

After the debate begun at the September 10 meeting of the Adult Program Standing Committee about the differences between Vermont and Pennsylvania laws and what happens in practice in regard to involuntary psychiatric medications, Commissioner Hartman gathered more information from Representative Anne Donahue and from the Department of Mental Health's (DMH) Legal Unit. Based on what he has learned so far, it is safe to say that the time from inpatient hospitalization to a court order for involuntary psychiatric medication in nonemergency situations is significantly longer in Vermont than it is in nearby states. The time in Vermont is a minimum of forty-five days, and it can be as long as eighty or ninety days. Some patients stay in the Vermont State Hospital that long without participating in any kind of treatment. For Commissioner Hartman, the essence of the issue lies in the question, "Do we want to use competency [rather than commitment] to shorten the process in Vermont?" The time for medicating individuals against their will can be considerably shorter in Pennsylvania—within five days—because the judicial and medical processes are separate; that is, the legal requirements do not stop the treatment that physicians determine to be necessary. (See attachment of handout: "Pennsylvania Commitment/IVM Procedure.")

Wendy Beinner, DMH's Assistant Attorney General, is doing research to be able to include more states in this interstate comparison of involuntary medication processes in Vermont and elsewhere. Some recent medication case rulings in Vermont do not really clarify the issues of immediate concern.

Kitty Gallagher asked how involved lawyers are in the cases of people who are declared incompetent. She also wanted to know how well they inform their clients about the process they must go through. Michael said that those are questions that Wendy could answer.

Central Vermont Medical Center's Application for New Electroconvulsive Therapy Program

Drs. Peter Thomashow and Kenneth Adler attended made a presentation on the Central Vermont Medical Center's (CVMC) pursuit of state approval for the administration of electroconvulsive therapy (ECT) to psychiatric patients. Since 2000, responsibility for designating hospitals and monitoring ECT has belonged to Vermont's Department of Mental Health (DMH). The presentation to the Standing Committee was one of the ways in which CVMC is publicizing the new program that it hopes to offer upon completion of the formal application process, which will include review of policies and procedures and a site visit by DMH to determine the hospital's readiness to meet state requirements.

ECT is for certain mental illnesses, primarily major depression, that do not respond well to other kinds of treatment. The doctors explained that numerous advances in ECT in recent years have made it a much more effective treatment, with fewer negative side effects, than previously. The latest advance is called ultra-brief unilateral ECT, which affects only one side of the brain (as opposed to bilateral ECT, affecting both sides of the brain). The side effect still most commonly experienced by individuals who have ECT is short-term memory loss—or, in very rare cases, some long-term memory loss as well. Dr. Thomashow used the video, "Electroconvulsive Therapy," to help the Standing Committee understand how CVMC intends to complement other information that will be given to families and patients about what they can expect from ECT treatments. The video was made at CVMC's affiliate, Dartmouth-Hitchcock Medical Center, to update and expand the parameters of informed consent to ECT. Based on the hospital's current experience, Drs. Thomashow and Adler estimate that between six and ten patients per year will receive ECT routinely at CVMC.

Approval of September 10 Meeting Notes

The notes were unanimously accepted as submitted. No one abstained.

System of Care Plan, Fiscal Years 2008-2010

Standing Committee members commented on various aspects of the current draft:

- Need to cover recovery housing funding somewhere
- Access to CRT programs, also disenrollments
- Need to mention exemplary Adult Outpatient programs designed to increase access within limited resources
- Integration:
  - Mental health and physical health
  - Public and private providers

New Vermont State Hospital (VSH) Policy

Standing Committee members reviewed the VSH Positive Behavior Supports Policy, which is currently posted on the Web. It is laying the foundation for more aggressive involvement of the State Hospital's Psychology Department in treatment for patients, thus implying a need for more staff training. Standing Committee members asked for more information about the model of

training for staff specifically in regard to treatment plans. Also, they wanted to know what kinds of behavioral support services VSH is considering. The language of the policy is difficult to read. George Karabakakis suggested adding a form for consultation requests. Kitty expressed her belief that patients should be involved in the process too. Standing Committee members will send their feedback for the Policy Committee to Terry Rowe. The deadline for comments is Monday, October 8.

Report on Futures Peer Support Work Group: Kitty Gallagher

The group has been meeting for over two years, Kitty said. It meets on the second Thursday of the month. The work group is currently considering two different ways of encouraging peer-run supports in Vermont:

- ✓ **Peer-run crisis beds.** Four of the members of the work group plan to visit Rose House in New York and Stepping Stones in New Hampshire to see what a peer-run crisis service looks like. Both programs permit only voluntary medications, and alternative treatments (such as acupuncture) are available. Kitty said that she will videotape the visits and offered to show the videos to the Standing Committee.

- ✓ **Peer certification program.** Kitty and others went to a recent conference on peer specialists in Denver and learned about a certification program in Michigan that has certified peer supporters in many states. Kitty purchased the trainer's manual, and Beth Tanzman, Deputy Commissioner of Mental Health, and Nick Nichols, DMH's Human Resource Development Chief, are reviewing the curriculum. The hope is to have certified peer-support specialists in Vermont.

More Departmental Updates: Frank Reed

- ♦ **Transformation Council.** The new Transformation Council held its first meeting last week. Marty reported that she was impressed that Commissioner Hartman addressed at the outset the need for respect and collaboration among Council members. Meetings will be on the fourth Monday of the month, from 2:00 until 4:00 in the afternoon. Marty said that the Commissioner appears very interested in exploring ways to speed up the process for involuntary medication in Vermont.
- ♦ **Seclusion and Restraint Grant.** The Substance Abuse and Mental Health Services Administration (SAMHSA) awarded the Seclusion and Restraint grant for which Vermont applied in May. VSH and the Brattleboro Retreat will receive $640,000 over the next three years to work on reducing the use of seclusion and restraint in inpatient settings.
- ♦ **Public Hearing.** A public hearing on new construction at Northwest Counseling and Support Services (NCSS) in St. Albans will be held on Tuesday, October 16.
- ♦ **Implementation of Crisis Beds.** Northeast Kingdom Human Services (NKHS) opened its new crisis-bed program last week. NCSS is also close to full implementation.
- ♦ **Review of Proposals for Additional Crisis-Stabilization Beds.** The review of the four new crisis-bed proposals is scheduled for the afternoon of October 2 from 1:00 until 5:00 in Waterbury.
- ♦ **Recovery Celebration.** Sponsored by DMH and Vermont Psychiatric Survivors (VPS), the Recovery Celebration was held in the Health Department building on Cherry Street

on September 18. Mary Ellen Copeland, the designer of WRAP (Wellness Recovery Action Plan) and long a major figure in recovery in Vermont as well as nationally and internationally, gave the keynote address. DMH and VPS recognized her for her outstanding contributions to recovery over the past decade and more. Approximately eighty-five people attended, heard recovery stories, and participated in a variety of workshops throughout the day. Kitty videotaped highlights of the celebration.

- **VSH Census.** The VSH census is thirty-nine today, Frank said. It has been hovering in the forties for most of the past couple of weeks. The low census is partly attributable to Second Spring and partly to active discharge planning occurring in conjunction with the recommendations of the Department of Justice (DOJ). Second Spring's census is seven now.
- **DOJ Visit.** DOJ officials and consultants are at VSH through this Thursday, October 4.

Report from the Membership Committee

Kitty recommended that Mike Fitzgerald, from Southeastern Vermont, be considered for membership. George offered to bring him to a couple of Standing Committee meetings. Clare offered to call Sue Powers to see if a note from the Standing Committee will improve her position with her employers about necessary absences for meetings. If not, Sue may be asked to resign given ongoing absences from committee meetings. Clare will make an appeal at the next annual meeting of the National Alliance for Mental Illness of Vermont (NAMI—VT) for interested providers to apply for membership.

November Meeting

The Standing Committee meeting in November will take place on Monday, November 5 (the second Monday, November 12, is Veterans' Day, a holiday). The meeting will be from 10:00 until 1:30 because of the meeting of the Vermont Mental Health Block Grant Planning Council from 2:00 until 4:00 that afternoon.

Agenda items for the November meeting will include:

- Introductions, review of agenda, approval of minutes
- Peer support group from Health Care and Rehabilitation Services of Southeastern Vermont
- Report on VSH: Terry Rowe
- Report on mental-health training at the Police Academy: Cindy Taylor Patch and Wendy Beinner
- Redesignation for HowardCenter: Preliminary review
- Departmental updates
- Agenda for December meeting

Pennsylvania Commitment/ IVM Procedure

Under Pennsylvania's Mental Health Procedures Act, a person may be involuntarily hospitalized pursuant to an emergency exam statute similar to Vermont. As described in the next paragraph, involuntary nonemergency medication can begin immediately.

Pennsylvania law authorizes the person to be held for 5 days upon an emergency exam. Before then end of 5 days, an application for continued hospitalization must be filed in court. Within 24 hours from the time of filing, an informal hearing is conducted, where the court reviews the circumstances surrounding the hospitalization and explains the situation to the patient. If the court finds that the commitment standards appear to have been met, the person can be held an additional 20 days. If further hospitalization is needed, the state files for continued treatment. The court sets the hearing no later than 5 days after filing, and the court must issue its order no later than 48 hours after close of testimony. This order can last up to 90 days (or 1 year for felons/incompetent to stand trial). The next order can last up to 180 days.

If a patient refuses medication, the Pennsylvania Office of Mental Health procedures for involuntary medication govern. They essentially require a second opinion, which can be done by an in-house psychiatrist, so long as he/she does an independent assessment. If the patient continues to refuse voluntary meds, the second opinion must be conducted every 30 days. The order for involuntary meds can be issued from the day a person is admitted.

Below are key components of the statute and procedure:

Mental Health Procedures Act (50 P.S. 7301 et. seq.)

§ 7302. Involuntary emergency examination and treatment authorized by a physician--not to exceed one hundred twenty hours.

(a) Application for Examination.--Emergency examination may be undertaken at a treatment facility upon the certification of a physician stating the need for such examination; or upon a warrant ….authorizing such examination; or without a warrant upon application by a physician or other authorized person who has personally observed conduct showing the need for such examination.

(b) Examination and Determination of Need for Emergency Treatment.--A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section §7301 and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately…..

(d) Duration of Emergency Examination and Treatment.--A person who is in treatment pursuant to this section shall be discharged whenever it is determined that he no longer is in need of treatment and in any event within 120 hours, unless within such period:

1. he is admitted to voluntary treatment pursuant to section 202 [§ 7202] of this act; or

2. a certification for extended involuntary emergency treatment is filed pursuant to section 303 [§ 7303] of this act.

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§ 7303. Extended involuntary emergency treatment certified by a judge or mental health review officer--not to exceed twenty days.

(a) Persons Subject to Extended Involuntary Emergency Treatment.--Application for extended involuntary emergency treatment may be made for any person who is being treated pursuant to section 302 [§ 7302] whenever the facility determines that the need for emergency treatment is likely to extend beyond 120 hours. The application shall be filed forthwith in the court of common pleas, and shall state the grounds on which extended emergency treatment is believed to be necessary. The application shall state the name of any examining physician and the substance of his opinion regarding the mental condition of the person.

(b) Appointment of Counsel and Scheduling of Informal Hearing.--Upon receiving such application, the court of common pleas shall appoint an attorney who shall represent the person unless it shall appear that the person can afford, and desires to have, private representation. Within 24 hours after the application is filed, an informal hearing shall be conducted by a judge or by a mental health review officer and, if practicable, shall be held at the facility.

(c) Informal Conference on Extended Emergency Treatment Application.--

1. At the commencement of the informal conference, the judge or the mental health review officer shall inform the person of the nature of the proceedings. Information relevant to whether the person is severely mentally disabled and in need of treatment shall be reviewed, including the reasons that continued involuntary treatment is considered necessary. Such explanation shall be made by a physician who examined the person and shall be in terms understandable to a layman. The judge or mental health review officer may review any relevant information even if it would be normally excluded under rules of evidence if he believes that such information is reliable. The person or his representative shall have the right to ask questions of the physician and of any other witnesses and to present any relevant information. At the conclusion of the review, if the judge or the review officer finds that the person is severely mentally disabled and in need of continued involuntary treatment, he shall so certify. Otherwise, he shall direct that the facility director or his designee discharge the person.
2. A record of the proceedings which need not be a stenographic record shall be made. Such record shall be kept by the court or mental health review officer for at least one year.

(d) Contents of Certification.--A certification for extended involuntary treatment shall be made in writing upon a form adopted by the department and shall include:

1. findings by the judge or mental health review officer as to the reasons that extended involuntary emergency treatment is necessary:

2. a description of the treatment to be provided together with an explanation of the adequacy and appropriateness of such treatment, based upon the information received at the hearing;
3. any documents required by the provisions of section 302; [§ 7302]
4. the application as filed pursuant to section 303(a); [§ 7303]
5. a statement that the person is represented by counsel; and
6. an explanation of the effect of the certification, the person's right to petition the court for release under subsection (g) and the continuing right to be represented by counsel.

(e) Filing and Service.--The certification shall be filed with the director of the facility and a copy served on the person, such other parties as the person requested to be notified pursuant to section 302(c) [§ 7302], and on counsel.

(f) Effect of Certification.--Upon the filing and service of a certification for extended involuntary emergency treatment, the person may be given treatment in an approved facility for a period not to exceed 20 days.

(g) Petition to Common Pleas Court.--In all cases in which the hearing was conducted by a mental health review officer, a person made subject to treatment pursuant to this section shall have the right to petition the court of common pleas for review of the certification. A hearing shall be held within 72 hours after the petition is filed unless a continuance is requested by the person's counsel. The hearing shall include a review of the certification and such evidence as the court may receive or require. If the court determines that further involuntary treatment is necessary and that the procedures prescribed by this act have been followed, it shall deny the petition. Otherwise, the person shall be discharged.

(h) Duration of Extended Involuntary Emergency Treatment.--Whenever a person is no longer severely mentally disabled or in need of immediate treatment and, in any event, within 20 days after the filing of the certification, he shall be discharged, unless within such period:

1. he is admitted to voluntary treatment pursuant to section 202 [§ 7302]; or
2. the court orders involuntary treatment pursuant to section 304. [§ 7304]

§ 7304. Court-Ordered Involuntary Treatment Not To Exceed Ninety Days.

(a) Persons for Whom Application May be Made.--

1. A person who is severely mentally disabled and in need of treatment, as defined in section 301(a), may be made subject to court-ordered involuntary treatment upon a determination of clear and present danger under section 301(b)(1) (serious bodily harm to others), or section 301(b)(2)(i) (inability to care for himself, creating a danger of death or serious harm to himself), or 301(b)(2)(ii) (attempted suicide), or 301(b)(2)(iii) (self-mutilation).
2. Where a petition is filed for a person already subject to involuntary treatment, it shall be sufficient to represent, and upon hearing to reestablish, that the conduct

originally required by section 301 in fact occurred, and that his condition continues to evidence a clear and present danger to himself or others. In such event, it shall not be necessary to show the reoccurrence of dangerous conduct, either harmful or debilitating within the past 30 days.

(b) Procedures for Initiating Court-ordered Involuntary Treatment for Persons Already Subject to Involuntary Treatment.--

1. Petition for court-ordered involuntary treatment for persons already subject to treatment under sections 303, 304 and 305 may be made by the county administrator or the director of the facility to the court of common pleas.
2. The petition shall be in writing upon a form adopted by the department and shall include a statement of the facts constituting reasonable grounds to believe that the person is severely mentally disabled and in need of treatment. The petition shall state the name of any examining physician and the substance of his opinion regarding the mental condition of the person. It shall also state that the person has been given the information required by subsection (b)(3).
3. Upon the filing of the petition the county administrator shall serve a copy on the person, the attorney, and those designated to be kept informed, as provided in section 302(c), including an explanation of the nature of the proceedings, the person's right to an attorney and the services of an expert in the field of mental health, as provided by subsection (d).
4. A hearing on the petition shall be held in all cases, not more than five days after the filing of the petition.
5. Treatment shall be permitted to be maintained pending the determination of the petition.

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(d) Professional Assistance.--A person with respect to whom a hearing has been ordered under this section shall have and be informed of a right to employ a physician, clinical psychologist or other expert in mental health of his choice to assist him in connection with the hearing and to testify on his behalf. If the person cannot afford to engage such a professional, the court shall, on application, allow a reasonable fee for such purpose. The fee shall be a charge against the mental health and mental retardation program of the locality.

(e) Hearings of Petition for Court-order Involuntary Treatment.--A hearing on a petition for court-ordered involuntary treatment shall be conducted according to the following:

1. The person shall have the right to counsel and to the assistance of an expert in mental health.
2. The person shall not be called as a witness without his consent.
3. The person shall have the right to confront and cross-examine all witnesses and to present evidence in his own behalf.
4. The hearing shall be public unless it is requested to be private by the person or his counsel.

5. A stenographic or other sufficient record shall be made, which shall be impounded by the court and may be obtained or examined only upon the request of the person or his counsel or by order of the court on good cause shown.
6. The hearing shall be conducted by a judge or by a mental health review officer and may be held at a location other than a courthouse when doing so appears to be in the best interest of the person.
7. A decision shall be rendered within 48 hours after the close of evidence.

(f) Determination and Order.--Upon a finding by clear and convincing evidence that the person is severely mentally disabled and in need of treatment and subject to subsection (a), an order shall be entered directing treatment of the person in an approved facility as an inpatient or an outpatient, or a combination of such treatment as the director of the facility shall from time to time determine. Inpatient treatment shall be deemed appropriate only after full consideration has been given to less restrictive alternatives. Investigation of treatment alternatives shall include consideration of the person's relationship to his community and family, his employment possibilities, all available community resources, and guardianship services. An order for inpatient treatment shall include findings on this issue.

(g) Duration of Court-ordered Involuntary Treatment.--

1. A person may be made subject to court-ordered involuntary treatment under this section for a period not to exceed 90 days, excepting only that: Persons may be made subject to court-ordered involuntary treatment under this section for a period not to exceed one year if the person meets the criteria established by clause (2)
2. A person may be subject to court-ordered involuntary treatment for a period not to exceed one year if:
    i. severe mental disability is based on acts giving rise to the following charges under the Pennsylvania Crimes Code: murder (§ 2502); voluntary manslaughter (§ 2503); aggravated assault (§ 2702); kidnapping (§ 2901); rape (§ 3121(1) and (2)); involuntary deviate sexual intercourse (§ 3123(1) and (2)); arson (§ 3301); and
    ii. a finding of incompetency to be tried or a verdict of acquittal because of lack of criminal responsibility has been entered.
    iii. If at any time the director of a facility concludes that the person is not severly mentally disabled or in need of treatment pursuant to subsection (a), he shall discharge the person provided that no person subjected to involuntary treatment pursuant to clause (2) may be discharged without a hearing conducted pursuant to clause (4).
    iv. In cases involving involuntary treatment pursuant to clause (2), whenever the period of court-ordered involuntary treatment is about to expire and neither the director nor the county administrator intends to apply for an additional period of court-ordered involuntary treatment pursuant to section 305 or at any time the director concludes that the person is not severely mentally disabled or in need of treatment, the director shall petition the court which ordered the involuntary treatment for the unconditional or conditional release of the person. Notice of such petition

shall be given to the person, the county administrator and the district attorney. Within 15 days after the petition has been filed, the court shall hold a hearing to determine if the person is severely mentally disabled and in need of treatment. Petitions which must be filed simply because the period of involuntary treatment will expire shall be filed at least ten days prior to the expiration of the court-ordered period of involuntary treatment. If the court determines after hearing that the person is severely mentally disabled and in need of treatment, it may order additional involuntary treatment not to exceed one year; if the court does not so determine, it shall order the discharge of the person.

7305. Additional Periods Of Court-Ordered Involuntary Treatment.

(a) At the expiration of a period of court-ordered involuntary treatment under section 304(g), or this section, the court may order treatment for an additional period upon the application of the county administrator or the director of the facility to which the person is receiving treatment. Such order shall be entered upon hearing on findings as required by sections 304(a) and (b), and the further finding of a need for continuing involuntary treatment as shown by conduct during the person's most recent period of court-ordered treatment. The additional period of involuntary treatment shall not exceed 180 days; provided that persons meeting the criteria of section 304(g)(2) may be subject to an additional period of up to one year of involuntary treatment. A person found dangerous to himself under section 301(b)(2)(i), (ii), or (iii) shall be subject to an additional period of involuntary full-time inpatient treatment only if he has first been released to a less restrictive alternative. This limitation shall not apply where, upon application made by the county administrator or facility director, it is determined by a judge or mental health review officer that such release would not be in the person's best interest.

(b) The director of the facility in which the person is receiving treatment shall notify the county administrator at least ten days prior to the expiration of a period of involuntary commitment ordered under section 304 or this section.

Procedures - Nonemergency Administration of Medication Over Objections:

Whenever a mentally ill person in involuntary treatment pursuant to Sections 302, 303, 304 or 305 of the Act protests treatment with any psychotropic medication, the following procedures are to be followed by the treatment team director or his/her designee:

(1) Determine and document whether the medication is necessary (i.e., is reasonably required to provide adequate treatment or is needed to prevent physical injury) in light of the objection and whether there are reasonable alternatives.

(2) Discuss with the patient the reasons why a specific medication is indicated and any available alternatives. Discuss with the patient his or her concerns and the reasons for the protest. Seek informed consent. Document these discussions, the reasons for the protest and whether or not consent is obtained.

(3) If the patient continues to refuse medication, obtain a second opinion from a psychiatrist concerning the degree of medical necessity/advisability for the medication. The psychiatrist providing the second opinion may be a colleague of the treating psychiatrist. However, the second opinion should be based on an independent examination of the patient and an independent review of all medical records or tests.

(4) If the consulting psychiatrist concurs that the protested medication is necessary, the medication may be administered. Appropriate respect shall be shown for the patient's feelings and dignity. If the second opinion does not agree with the necessity of the proposed medication, a third psychiatric opinion should be obtained before proceeding. Psychiatrists consulted for a second opinion should consider the risk/benefit value of the medication if administered over protest, the reason(s) for the protest, and alternative treatment approaches available.

(5) If protests persist after medication has been tried, an additional second opinion based upon independent review should be obtained every 30 days as to the continuing need for the medication.

(6) Treatment team planning and review sessions should afford the patient and those helping the patient with opportunities to discuss concerns about or protests to any aspect of the proposed treatment. Medication over objection should be documented in the individualized treatment plan.